

STATE OF MICHIGAN
COURT OF APPEALS

JAMES A. WYCKHOUSE,

Plaintiff-Appellant,

v

THOMAS A. PAWELKOWSKI and CITY OF
WARREN,

Defendants-Appellees.

UNPUBLISHED

July 16, 2015

No. 322367

Macomb Circuit Court

LC No. 201-001169-CZ

Before: HOEKSTRA, P.J., and JANSEN and METER, JJ.

PER CURIAM.

The trial court granted defendants' motion for summary disposition and plaintiff appeals. We affirm.

Plaintiff is a resident of the city of Warren and defendant Thomas Pawelkowski is the superintendent of the city's water division. In 2011, the city began installing new automated meters, referred to as "smart meters," on the residences of consumers getting their water from the city. Plaintiff objected to the installation of a smart meter at his house and refused to schedule an appointment to have one installed. Plaintiff alleges that defendants entered his property without permission and terminated his water access due to his failure to schedule a time for installation of the smart meter. Access was later reinstated after Pawelkowski received assurances from an attorney representing plaintiff that plaintiff would allow a smart meter to be installed. Pawelkowski averred that he subsequently received a letter from plaintiff in which he indicated he was agreeing to the installation "under duress." Before a meter was installed, however, plaintiff filed this suit, asserting causes of action for *trespass quare clausum fregit* ("why he broke the close"),¹ *trespass on the case*,² and *trespass vi et armis* ("with force and arms").³

¹ "At common law, an action to recover damages resulting from another's unlawful entry on one's land that is visibly enclosed." *Black's Law Dictionary* (9th ed).

² "At common law, an action to recover damages that are not the immediate result of wrongful act but rather a later consequence." *Black's Law Dictionary* (9th ed).

Plaintiff also petitioned the court for a “writ of prohibition” to prevent defendant Pawelkowski from installing a smart meter at his residence.

In lieu of answering the complaint, defendants moved for summary disposition under MCR 2.116(C)(7) (immunity granted by law) and (C)(8) (failure to state a claim). The trial court agreed that summary disposition was appropriate, saying that plaintiff’s “pleadings [did] not conform to the current requirements to withstand this motion.” Plaintiff moved for reconsideration, which the court denied.

Contemporaneously with filing his claim of appeal, plaintiff moved this Court for emergency injunctive relief to prevent defendants from either terminating his access to water or installing a smart meter. We denied the motion, *Wyckhouse v Pawelkowski*, unpublished order of the Court of Appeals, entered June 24, 2014 (Docket No. 322367), as well as plaintiff’s motion for reconsideration, *Wyckhouse v Pawelkowski*, unpublished order of the Court of Appeals, entered August 4, 2014 (Docket No. 322367).

On appeal, plaintiff states his first question presented as follows:

Whether the Citizens (Plaintiff/Appellant) of the Republic are in charge, or are the “public functionaries” (Defendants/Appellee’s) of the municipality of the City of Warren in charge as regarding their delegated lawful authority which does not impact health/public safety or enhance the Republic.

It appears that he is contending that defendants do not have the authority to install smart meters against the will of the residents of the city of Warren. If this argument were properly presented on appeal, it would be a question of law subject to de novo review. *Citizens State Bank v Nakash*, 287 Mich App 289, 292; 788 NW2d 839 (2010).

However, plaintiff has not properly presented his issue to this Court. Plaintiff asserts that he presented this argument in his response to defendants’ motion for summary disposition but the trial court failed to address it. He does not further explain or elaborate on his underlying argument in his brief on appeal. He cites to *Norton v Shelby Co*, 118 US 425; 6 S Ct 1121; 30 L Ed 178 (1886), but he does not explain how *Norton*, a case determining whether a law purporting to create a board of commissioners violated the Tennessee Constitution, *id.* at 440-441, applies or supports his argument. “ ‘It is not enough for an appellant in his brief simply to . . . assert an error and then leave it up to this Court to . . . unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.’ ” *Mettler Walloon, LLC v Melrose Twp*, 281 Mich App 184, 220; 761 NW2d 293 (2008), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959) (alterations in *Mettler Walloon*). Plaintiff’s failure to adequately brief the issue constitutes abandonment of the issue. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 627; 750 NW2d 228 (2008).

Plaintiff states his second question presented as follows:

³ “At common law, an action for damages resulting from an intentional injury to person or property” *Black’s Law Dictionary* (9th ed).

Whether the Lower Court committed palpable error when it granted Defendants/Appellee's Motion for Summary Disposition, claiming that Plaintiff/Appellant's Complaint, as filed, was lacking to support his claims of trespass when not giving full weight and application of Plaintiff/Appellant's Complaint which alleged that the actions of the Defendants/Appellees were not "de jure", and therefore they lost their immunity and thus became trespassers/"usurpers".

It appears that his argument is that defendants were not entitled to immunity because their actions were not "de jure." For the same reasons recited with respect to plaintiff's first issue, we conclude that plaintiff has abandoned his second issue.⁴

Finally, we conclude defendant's third issue is without merit. At the hearing on defendants' motion for summary disposition, the trial court seemed sympathetic to plaintiff, but suggested that a better tactic would have been to challenge the ordinance allowing for the smart meters. Defendant argues that the trial court erred by failing to invite him to amend his complaint to challenge the validity of "the ordinance"⁵ allowing the city to install the smart meters. The trial court was not required to do so. *Kloian v Schwartz*, 272 Mich App 232, 242; 725 NW2d 671 (2006).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Patrick M. Meter

⁴ Further, as defendants argue, plaintiff failed to plead in avoidance of governmental immunity. See *Mack v City of Detroit*, 467 Mich 186, 204; 649 NW2d 47 (2002) ("A plaintiff pleads in avoidance of governmental immunity by stating a claim that fits within a statutory exception or by pleading facts that demonstrate that the alleged tort occurred during the exercise or discharge of a nongovernmental or proprietary function."). There are six statutory exceptions to governmental immunity, none of which applies in this case. See *Wesche v Mecosta Co Rd Comm*, 480 Mich 75, 84, 84 n 10; 746 NW2d 847 (2008).

⁵ It is unclear which particular ordinance plaintiff is referring to.